

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Care Initiatives, Petitioner-Appellant, v. Pottawattamie County Board of Review, Respondent-Appellee.	ORDER Docket No. 11-78-0081 Parcel No. 7739 04 201 003
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On March 5, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Care Initiatives was represented by attorney Deborah M. Tharnish of Davis Brown Law Firm of Des Moines. Assistant County Attorney Leanne Gifford represented the Board of Review. Care Initiatives submitted evidence in support of its position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Care Initiatives appeals from the Pottawattamie County Board of Review decision reassessing its property located at 610 East York Road, Avoca, Iowa. According to the property record card, the subject property consists of a 37,690-square-foot, one-story nursing home and a detached 1368-square-foot, laundry building both built in 2001. The property is also improved by 18,880 square feet of asphalt paving and 926 square feet of canopy. The real estate was classified as commercial for the assessment of January 1, 2011, and valued at \$2,587,500, representing \$201,250 in land value and \$2,386,250 in improvement value.

Care Initiatives protested to the Board of Review on the ground that the property was misclassified under Iowa Code section 441.37(1)(a)(3). It asserted the property's classification should be residential. The Board of Review denied the petition.

Care Initiatives then appealed to this Board and reasserted its claim. It relies on Iowa Code section 441.21(11) and the holding in *Evangelical Lutheran Good Samaritan Society v. Board of Review of the County of Montgomery*, 688 N.W.2d 482 (Iowa Ct. App. 2004), as the basis for its request for residential classification. It does not challenge the assessed value of the subject property.

At hearing, counsel for the Board of Review confirmed it did not challenge that (1) Care Initiatives is a 501(c)(3) non-profit organization¹ or (2) that Care Initiatives had no unrelated business income.² Thus, the issue on appeal is narrowed to whether the property is used primarily for human habitation. Care Initiatives asserts its primary use is for human habitation. The Board of Review contends 50% or more of the property is used for rehabilitation services.

Steve Marlow, Vice President and Chief Financial Officer for Care Initiatives, testified on its behalf. Marlow stated the organization owns forty-four skilled nursing homes/rehabilitation centers, eight assisted living and independent living facilities, and six hospice agencies throughout Iowa. These facilities provide convalescent care to elderly individuals in a comfortable, home-like environment from caring individuals. He confirmed that Care Initiatives is a 501(c)(3) corporation that receives no unrelated business income as indicated on its Form 990.

The Avoca facility is licensed for forty-six skilled nursing beds. It has two dining rooms, a social room, and a therapy room. The facility has a hub and spoke design with a central nursing station and private or semi-private resident rooms in the wings.

¹ Care Initiatives submitted a letter from the Internal Revenue Service (IRS), dated July 18, 1996 (Exhibit 4). The letter determined Care Initiatives qualified as a section 501(c)(3) organization.

² Care Initiatives filed IRS Form 990 – Return of Organization Exempt From Income Tax (Exhibit 3) for Care Initiatives, Inc. for calendar year 2009. The return shows the corporation had no unrelated business taxable income from a Form 990-T (Exhibit 3, pp. 1 & 9).

Marlow testified the area used for therapy is 5% or less of the facility. The therapy room is used for physical, occupational, and speech therapy primarily by Medicare residents who stay at the facility for an approximate 100-day combined hospital/nursing care stay.³ Typically, these Medicare patients are provided three to four therapy sessions per week for thirty to forty-five minutes. On average, there are only three-and-one-half Medicare residents at the facility at any given time. Therapy services are also provided to permanent residents in a more limited manner. The full-time, general population residents are offered restorative, physical therapy care. Additionally, Marlow testified the therapy services are used by individuals not residing at Care Initiatives; however, many of these people are former residents. This non-resident therapy services amounts to a minor portion of the facility's annual revenue, approximately \$15,000 of the \$3 to \$3.5 million (or less than 1%). He was unaware whether there were any other facilities in Avoca that provided physical therapy services.

Care Initiatives also provided a series of email communications and policy statements from the Iowa Department of Revenue (IDR) (Exhibits 5, 8 & 9). These documents indicate IDR's position regarding the classification of property under the statute at issue. The emails occurred in approximately May 2011. Cary Halfpop, Chief Appraiser in the Property Tax Division at IDR, indicated in the letter that if nursing home properties and/or assisted living facilities are owned by a 501(c)(3) organization, are used primarily for human habitation, and if the rental income from the property is not taxed as unrelated business income, they should be classified residential. In a follow-up email, Halfpop recommends seeing the 501(c)(3) documentation and reiterates the position that these properties should be classified residential if they meet the aforementioned criteria (Exhibit 9).

Care Initiatives also submitted copies of *Care Initiatives v. Lyon Co Board of Review*, PAAB Docket No. 11-60-0074 (Exhibit 8) and *Care Initiatives v. Guthrie County Board of Review*, PAAB Docket No. 11-39-0080 (Exhibit 7), in which this Board held the nursing homes at issue, also owned

³ This usually includes up to twenty-one days of hospitalization prior to the stay at Care Initiatives.

by Care Initiatives, should be classified residential. We note that, technically, our decisions in these other cases are of little relevance in this case because the issue before us is a factual question: whether this particular facility in Avoca is used primarily for human habitation.

The Board of Review did not submit any exhibits or call any witnesses at hearing.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

Care Initiatives asserts its property is misclassified and its actual classification should be residential. Iowa Code section 441.21(11) designates that properties meeting certain criteria to be classified as residential real estate. It states:

Beginning with valuations established on or after January 1, 1995, as used in this section, “residential property” includes . . . land and buildings used primarily for human habitation which land and buildings are owned and operated by organizations that have received tax-exempt status under section 501(c)(3) of the Internal Revenue Code and rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A.

Additionally, the Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rule when they classify property and exercise assessment functions. r. 701-71.1(2). Classification is based on the property’s present use and not its highest and best use. r. 701-71.1(1). There can be only one classification per property. *Id.*

Iowa Administrative rule 701-71.1(4), related to the classification of residential real estate, states that properties owned and operated by section 501(c)(3) organizations are classified as residential real estate. It states:

Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, . . . [And] land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate.

Conversely, commercial real estate

shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. [...] However, regardless of the number of separate living quarters or any commercial use of the property . . . land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated

business income under Iowa Code section 422.33(1A), shall be classified as residential real estate.

Iowa Admin. r. 701-71.1(5).

The parties agree that Care Initiatives is a 501(c)(3) organization and its income from the property is not taxed as unrelated business income. Thus this Board needs only to determine whether the property is used primarily for human habitation, in contrast to “property primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail.” r. 701-71.1(5). This issue has been addressed by the Iowa Supreme Court in *Evangelical Lutheran Good Samaritan Soc. v. Bd. of Review*, 688 N.W.2d 482, 491 (Iowa App. 2004). The Court held that an eighty-eight bed, non-profit, skilled-nursing facility in Red Oak, Iowa, met the statutory definition of residential property. It determined the property was “used primarily for human habitation, in contrast to ‘property primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale.’” *Id.*

The subject property is the residence of elderly and infirm individuals. Additionally, it provides services to them they would enjoy in their own homes. It also provides therapy services. Uncontroverted testimony indicates only approximately 5% of the physical structure is used for these services, and less than 1% of the facility’s annual revenues is derived from providing outside physical therapy. Despite the somewhat commercial nature of the therapy services, the availability of these services does not overshadow the property’s primary use for human habitation. Additionally, the commercial classification rule specifically notes an exception when there is an existing commercial use.

“Regardless of ... any commercial use of the property the buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate.


Iowa Admin. r. 701-71.1(5) (emphasis added).

Following Iowa law governing the classification of real estate, we find the Care Initiatives' property falls squarely within the residential classification. The preponderance of the evidence in the record demonstrates Care Initiatives' property is: (1) used primarily for human habitation; (2) its land and buildings are owned and operated by an organization that has received tax-exempt status under section 501 (c)(3) of the Internal Revenue Code; and (3) its rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A, as of January 1, 2011.


THE APPEAL BOARD ORDERS that the January 1, 2011, assessment of the Care Initiatives' property located at 610 East York Road, Avoca, Iowa, is modified by changing its classification to residential. The assessed valuation of \$2,587,500, representing \$201,250 in land value and \$2,386,250 in improvement value remains unchanged.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Pottawattamie County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected, accordingly.

Dated this 3rd day of April, 2013.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair



Karen Oberman, Board Member

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AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>April 3, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature_____	